UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Gregory B. Jaczko, Chairman
Peter B. Lyons
Dale E. Klein
Kristine L. Svinicki

In the Matter of	)	
PROGRESS ENERGY CAROLINAS, INC.	)	Docket Nos. 52-022-COL & 52-023-COL
(Shearon Harris Nuclear Power Plant, Units 2 and 3)	)	

CLI-09-08

MEMORANDUM AND ORDER

This appeal concerns the application of Progress Energy Carolinas, Inc. (Progress Energy) for a combined license (COL) for two new nuclear generation units at its existing Shearon Harris site in North Carolina. Progress Energy[1] and the NRC Staff[2] both appeal from the Licensing Board's decision to admit one contention proposed by the North Carolina Waste Awareness and Reduction Network (NC WARN or Petitioner).[3]

[1] *Progress Energy's Appeal of the Atomic Safety and Licensing Board's Decision Admitting the North Carolina Waste Awareness and Reduction Network* (Nov. 10, 2008) (Progress Energy Appeal).

[2] *NRC Staff Notice of Appeal of LBP-08-21, Memorandum and Order (Ruling on Standing and Contention Admissibility), and Accompanying Brief* (Nov. 10, 2008) (Staff Notice of Appeal); *NRC Staff's Brief in Support of Appeal from LBP-08-21* (Nov. 10, 2008) (Staff Appeal).

[3] LBP-08-21, 68 NRC ___, slip op. (Oct. 30, 2008).

NC WARN opposes both appeals.[4] For the reasons provided below, we grant the appeals and remand the proceeding to the Board for reassessment of the admissibility of NC WARN's contention.

We also consider a motion by NC WARN to hold the proceeding in abeyance pending the completion of the NRC's rulemaking on the Westinghouse Electric Corporation (Westinghouse) AP1000 advanced pressurized water power reactor certified design.[5] Progress Energy[6] and the Staff[7] oppose NC WARN's motion. NC WARN replied to the Progress Energy and Staff oppositions to its motion.[8] We deny the motion to hold the proceeding in abeyance, and also deny the motion for reconsideration of CLI-08-15 embedded therein.

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[4] *Response by NC WARN in Opposition to NRC Staff and Progress Energy Appeals from LBP-08-21* (Nov. 20, 2008).

[5] *Motion by NC WARN to Hold the Harris Combined License Application Adjudication in Abeyance Pending Completion of Rulemaking on the Standard Design Certification Application for the AP1000 Reactor Design* (Nov. 13, 2008) (NC WARN Abeyance Motion).

[6] *Progress Response to the North Carolina Waste Awareness and Reduction Network Second Motion to Hold Proceeding in Abeyance* (Nov. 24, 2008) (Progress Energy Response to Abeyance Motion).

[7] *NRC Staff Answer to "Motion by NC WARN to Hold the Harris Combined License Application Adjudication in Abeyance Pending Completion of Rulemaking on the Standard Design Certification Application for the AP1000 Reactor Design"* (Nov. 24, 2008) (Staff Answer to Abeyance Motion).

[8] *Reply by NC WARN to Responses by Progress and NRC Staff in Opposition to NC WARN's Motion to Hold Proceeding in Abeyance* (Nov. 29, 2008) (NC WARN Reply Re Abeyance Motion).

I. BACKGROUND

NC WARN submitted ten proposed contentions in its petition to intervene.[9] In the one admitted contention, Contention TC-1 (AP1000 Certification), NC WARN claimed:

> The [COL application] is incomplete because many of the major safety components and procedures at [the] proposed [Shearon] Harris reactors are only conditional at this time. The [COL application] adopts by reference a design and operational procedures that have not been certified by the NRC or accepted by the applicant. Modifications to the design or operational procedures for the AP1000 Revision 16 would require changes in Progress Energy's application, the final design and operational procedures. Regardless whether the components are certified or not, the [COL application] cannot be reviewed without the full disclosure of all designs and operational procedures.[10]

NC WARN explained that:

> The validity of this contention does not depend on whether the ultimate design is certified or not; the [COL application] is incomplete and cannot be reviewed by the NRC [S]taff or affected petitioners. Specifically at the proposed [Shearon] Harris reactors, the application does not contain the following:
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> a. The final design of the reactor containment.
> b. The control room set up and operator decision-making procedures.
> c. Seismic qualifications for various components of the AP1000 reactors.
> d. The establishment of fire protection areas.
> e. Technology requirements for heat removal.
> f. Human factors engineering design throughout the plant.
> g. Plant personnel requirements.
> h. Alarm systems throughout the plant.
> i. Plant-wide requirements for pipes and conduits.
>
> In addition to the Westinghouse-acknowledged deficiencies in the sump and design instrumentation and controls, it is clear that the missing

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[9] *Petition for Intervention and Request for Hearing by the North Carolina Waste Awareness and Reduction Network* (Aug. 4, 2008) (Intervention Petition).

[10] Intervention Petition at 13.

> components and procedures are crucial in assessing the safety and impacts of the proposed reactors.[11]

According to the Board, NC WARN "set forth facts indicating specific omissions from the [COL application] that fall within the scenario contemplated by the Commission"[12] in its Final Policy Statement on the Conduct of New Reactor Licensing Proceedings[13] and in an earlier decision in this proceeding interpreting the New Reactor Policy Statement.[14] The Board found that Contention TC-1 was "not a challenge to the AP1000 design review process, but rather a challenge to the Application itself."[15] The Board found that Progress Energy and the NRC Staff both "failed to provide information regarding whether or not the asserted omitted material was indeed omitted in the [COL application], nor did either provide information indicating whether such allegedly omitted information indeed is required to be in a [COL application]."[16] Because the asserted omissions were uncontroverted, the Board found them admissible.[17]

The Board limited the contention to the nine identified omissions listed above, and referred each of these omissions to the Staff "for resolution in the design certification rulemaking."[18] In making this referral, the Board also gave the Staff the task of sorting

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[11] *Id*. at 16.

[12] LBP-08-21, 68 NRC at ___, slip op. at 9.

[13] 73 Fed. Reg. 20,963 (Apr. 17, 2008) (New Reactor Policy Statement).

[14] CLI-08-15, 68 NRC 1 (2008).

[15] LBP-08-21, 68 NRC at ___, slip op. at 8.

[16] *Id*., 68 NRC at ___, slip op. at 9.

[17] *Id*.

[18] *Id*.

the asserted omissions: "Although certain asserted omissions appear to [the Board] to be with respect to information which would not ordinarily be required to be set out in the [COL application], in the absence of information or pleadings on that topic, [the Board] refer[red] the entire list to the Staff with confidence that [the] Staff will sort out those matters in their consideration in the design certification rulemaking."[19] The Board held "any hearing on this contention in abeyance pending the results of the Staff's review and consideration of those matters in the design certification rulemaking."[20]

II. LEGAL FRAMEWORK

In our New Reactor Policy Statement, we provided direction regarding the appropriate disposition of contentions on design matters proffered in COL proceedings, where a referenced design certification application is pending:

> [A] licensing board should treat the NRC's docketing of a design certification application as the Commission's determination that the design is the subject of a general rulemaking. We believe that a contention that raises an issue on a design matter addressed in the design certification application should be resolved in the design certification rulemaking proceeding, and not the COL proceeding. Accordingly, in a COL proceeding in which an application references the docketed design certification application, the licensing board should refer such a contention to the [S]taff for consideration in the design certification rulemaking, and hold that contention in abeyance, if it is otherwise admissible. Upon adoption of a final design certification rule, such a contention should be denied.[21]

While the Commission expected design certification proceedings normally to precede COL proceedings, our rules provide:

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[19] *Id.*, 68 NRC at ___, slip op. at 9 n.7.

[20] *Id.*, 68 NRC at ___, slip op. at 9.

[21] 73 Fed. Reg. at 20,972.

> An applicant for a construction permit or a combined license may, at its own risk, reference in its application a design for which a design certification application has been docketed but not granted.[22]

"If an applicant later decides not to reference a certified design, and instead proceeds with a site-specific design, any admissible issues would have to be addressed in the licensing adjudication."[23] If a petitioner believes that a COL application is incomplete, the petitioner may file a contention claiming that the application is deficient.[24]

Under our contention admissibility rules:

> A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:
> (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
> (ii) Provide a brief explanation of the basis for the contention;
> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
> (vi) . . . Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.[25]

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[22] 10 C.F.R. § 52.55(c).

[23] CLI-08-15, 68 NRC at 4.

[24] *Id*. at 2.

[25] *See* 10 C.F.R. § 2.309(f)(1).

III. DISCUSSION

Our contention admissibility requirements, as set out in 10 C.F.R. § 2.309(f)(1), obligate intervenors to "offer 'specific' contentions on 'material' issues, supported by 'alleged facts or expert opinion.'"[26] Intervenors must provide "a clear statement as to the basis for the contentions and the submission of . . . supporting information and references to specific documents and sources that establish the validity of the contention."[27] In evaluating petitions to intervene, licensing boards are "not free to ignore the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1),"[28] and contentions that do not satisfy the requirements must be rejected.[29] We defer to the Board's rulings on contention admissibility in the absence of clear error or abuse of discretion.[30]

A. Progress Energy and Staff Appeals

In its appeal, Progress Energy argues that Contention TC-1 is not admissible because it does not satisfy the standards for a contention of omission, and the Board

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[26] *Clinton*, CLI-05-29, 62 NRC at 808.

[27] *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 437 (2006), citing *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).

[28] *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC ___, ___, slip op. at 6 (Feb. 17, 2009), citing *Palo Verde*, CLI-91-12, 34 NRC at 155-56.

[29] *Palo Verde*, CLI-91-12, 34 NRC at 155-56.

[30] *Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Unit 3), CLI-08-17, 68 NRC ___, ___ (Aug. 13, 2008), slip op. at 4; *see also Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Unit 3), CLI-09-5, 69 NRC ___, ___, slip op. at 5 (Mar. 5, 2009); *PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-07-25, 66 NRC 101, 104 (2007); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 121 (2006).

erred in presuming that it did. Alternatively, Progress Energy argues, even if Contention TC-1 were admissible, the Board misapplied Commission policy when it referred the contention to the Staff for review in the AP1000 design certification amendment rulemaking because the issues raised are not appropriate for resolution in the design certification rulemaking.[31] The NRC Staff argues, first, that the contention is an impermissible challenge to our regulations — specifically, to 10 C.F.R. § 52.55(c), which allows applicants to submit combined license applications in advance of design certification, albeit at the applicant's risk. The Staff argues, second, that NC WARN failed to comply with 10 C.F.R. § 2.309(f)(1)(vi) because a contention of omission cannot be admissible unless each failure to include relevant information is identified with specificity and with supporting reasons.[32]

As we stated in the New Reactor Policy Statement and reiterated in CLI-08-15, an otherwise admissible contention that raises challenges to information in a design certification rulemaking should be referred to the Staff for resolution in the rulemaking.[33] This is a two-step process requiring, first, an admissibility determination, and second, a determination as to whether an issue should be referred to the Staff for resolution in the design certification rulemaking. As discussed below, we find that the Board erred in referring Contention TC-1 to the Staff without making an appropriate contention admissibility determination.

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[31] Progress Energy Appeal at 3-4.

[32] Staff Appeal at 6-7.

[33] 73 Fed. Reg, at 20,972; CLI-08-15, 68 NRC at 3-4.

Citing the New Reactor Policy Statement directive that contentions raising design matters should be addressed in the design certification rulemaking proceeding, the Board concluded that NC WARN had "set forth facts indicating specific omissions from the [COL application] that fall within the scenario contemplated by the Commission."[34] In other words, *before* deciding whether the contention was admissible, the Board found that the contention was one that should be referred to the Staff for resolution as part of the pending rulemaking. With this conclusion as its apparent premise, the Board recast NC WARN's contention as a "contention of omission." Then, the Board found that because Progress Energy and the Staff did not controvert NC WARN's asserted omissions, the contention was admissible.

The Staff maintains that, in finding the contention admissible, the Board improperly shifted the burden to demonstrate contention admissibility from the Petitioner to the applicant and the Staff. We agree with the Staff's reasoning. It is true that in the case of a genuine contention of omission the applicant may be able to cure the omission by supplying the missing information, thus rendering the contention moot. But the initial burden of showing whether the contention meets our admissibility standards still lies with the petitioner.[35] As a result of shifting this obligation away from NC WARN, the Board's ruling does not address the arguments and the support NC WARN provided for Contention TC-1, as is required by 10 C.F.R. § 2.309(f)(1).[36]

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[34] LBP-08-21, 68 NRC at ___, slip op. at 9.

[35] *See Palo Verde*, CLI-91-12, 34 NRC at 155.

[36] We note, for example, that portions of the contention appear to be impermissibly speculative. To the extent the contention concerns future changes to the COL application that may come about as a result of amendments to the certified design, it is inadmissible. *Cf*. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Continued . . .

Even were we to disregard the Board's burden-shifting, the Board's conclusion that the contention was uncontroverted is, in our view, in error. Progress Energy argues that the list of nine items that the Board characterizes as "omissions" is in reality a paraphrase of items listed in a table that is part of the AP1000 design certification rule.[37] Thus, according to Progress Energy, all nine items are explicitly part of the AP1000 design certification rule. Further, because a COL incorporates both the design certification rule and the amendment application,[38] the Board erred in concluding that these nine items were omitted from the application. Progress Energy asserts that it made this point in pleadings before the Board (even though it did not treat Contention

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Nuclear Station, Units 1 and 2), 55 NRC 278, 294 (2002) ("[A]s a general matter, contentions that are based on projected changes to a license, not currently before the NRC in any proceeding or application, are not sufficient to support admission of a contention. An NRC proceeding considers the application presented to the agency for consideration and not potential future amendments that are a matter of speculation at the time of the ongoing proceeding."). If the design certification rulemaking amendment application results in updates to Progress Energy's combined license application, new contentions may be filed, subject to the requirements of 10 C.F.R. §§ 2.309(c) and 2.309(f)(2).

[37] The table is attached as part of Appendix A to the Progress Energy Appeal (AP1000 Design Control Document, Table 1-1, *Index of AP1000 Tier 2 Information Requiring NRC Approval for Change*).

[38] *See* Cover Letter to R. William Borchardt, Director, Office of New Reactors, from James Scarola, Senior Vice President and Chief Nuclear Officer, Progress Energy, Subject: *Application for Combined License for Shearon Harris Nuclear Power Plant Units 2 and 3 — NRC Project Number 738* (Feb. 18, 2008) (ML080580078) ("This COL application incorporates by reference Appendix D to 10 [C.F.R.] Part 52, as amended by Westinghouse Electric Company's AP1000 Design Control Document (DCD), Revision 16 which was submitted to the NRC on May 26, 2007, and Westinghouse Technical Report APP-GW-GLR-134, 'AP1000 DCD Impacts to Support [COL Application] Standardization,' Revision 3, which was submitted on January 14, 2008."). This treatment (incorporation by reference) is consistent with our rules when, as here, an applicant chooses to reference a standard design. *See* 10 C.F.R. §§ 52.55(c), 52.73(a).

TC-1 as a contention of omission),[39] and we agree that the Board erred when it stated that Progress Energy failed to address whether the nine items were included in the application.

We also are not persuaded that the Board thoroughly analyzed whether the issues raised in NC WARN Contention TC-1 — assuming it is admissible — belong in the design certification rulemaking rather than in this adjudication. We agree with the Staff that the Board misallocated the applicable regulatory obligations when it referred the list of nine "omissions" to the Staff to "sort out" in the context of the design certification rulemaking. Indeed, the Board's choice to make the referral, without sorting it first, implicitly acknowledges that it has not examined each "omission" itself in order to determine whether it encompasses a generic design issue or a site-specific issue appropriate for consideration in an individual application.

Progress Energy argues that the contention is site-specific, in that it relates to the use of the AP1000 design at the Shearon Harris site and to the possibility that future changes to the AP1000 design would require changes to Progress Energy's combined license application. According to Progress Energy, the examples NC WARN provided of consequences that flow from its contention — such as the argued inability to perform a probabilistic risk assessment for the Shearon Harris site and the argued inability to determine severe accident mitigation alternatives (SAMAs) in the environmental analysis of the site — demonstrate that the contention is a site-specific complaint about matters that cannot be resolved in the rulemaking context. NC WARN's own discussion of its

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[39] *See* Progress Energy Appeal at 15, citing *Progress Energy's Answer Opposing Petition for Intervention and Request for Hearing by the North Carolina Waste Awareness and Reduction Network* (Aug. 29, 2008) at 14.

contention lends support to this view. NC WARN argues that the design of many safety components and procedures is still in flux, making it difficult to perform a complete safety analysis: "[w]ithout having the current configuration, design and operating procedures in the application, the risk assessment and SAMAs cannot be determined. Until major components are incorporated into the [COL application] for a full review, much of the interaction between the various components cannot be resolved."[40] The universe of potential contentions in a combined license proceeding includes site-specific contentions that do not implicate issues appropriately considered in a design certification rulemaking; rote referral of contentions that are generally related to facility design to the Staff for resolution in rulemaking is not appropriate.

We therefore remand consideration of Contention TC-1 to the Board, and direct it to reassess the admissibility of Contention TC-1 based upon the contention admissibility criteria in 10 C.F.R. § 2.309(f)(1). If the Board concludes that NC WARN's contention is admissible, then we direct it to determine whether all or part of the contention is appropriate for resolution in the AP1000 design certification amendment rulemaking.

B. NC WARN Motion to Hold the Proceeding in Abeyance

1. Embedded Motion for Reconsideration

NC WARN's motion to hold the proceeding in abeyance includes within it a motion for reconsideration of CLI-08-15. In CLI-08-15 we denied a motion by NC WARN that asked for immediate suspension of the hearing notice for this proceeding pending completion of the Commission's design certification of the AP1000, including Revision 16 and any resulting modifications incorporated into the design of and the operational

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[40] Intervention Petition at 17.

practices at the proposed new nuclear generation units at the Shearon Harris site.[41] In its instant motion to hold the proceeding in abeyance, NC WARN asks us to reconsider our decision in CLI-08-15 based upon the arguments of a different petitioner in an unrelated matter,[42] and on the fact that Westinghouse submitted to the NRC Revision 17 of its AP1000 design control document. According to NC WARN, submission of Revision 17 means that "there is now no estimated completion date for the certification of the AP1000 reactors" and because "[t]he proposed [Shearon] Harris reactors remain tied to Revision 16," "the burden on NC WARN to achieve any semblance of participation in the [COL application] adjudication is nearing impossibility until and unless the Commission holds the adjudication in abeyance until the AP1000 design is completed."[43]

In response, Progress Energy and the Staff make a number of procedural arguments. Progress Energy argues that the request for reconsideration of CLI-08-15 is

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[41] *Motion to Immediately Suspend Hearing Notice and Request for Expedited Consideration by North Carolina Waste Awareness and Reduction Network* (June 23, 2008) (NC WARN Motion to Suspend). The NC WARN Motion to Suspend also asked that the hearing notice be suspended pending Progress Energy's responses to "data requests and other open schedule issues concerning Harris Lake and its water levels, alternative water sources, the impacts on aquatic species and transportation impacts." NC WARN Motion to Suspend at 1. The NC WARN Abeyance Motion does not raise this issue.

[42] *Texans for a Sound Energy Policy's* [TSEP's] *Petition to Hold Docketing Decision and/or Hearing Notice for Victoria Combined License Application in Abeyance Pending Completion of Rulemaking on Design Certification Application for Economically Simplified Boiling Water Reactor* (Nov. 3, 2008) (TSEP Petition).

[43] NC WARN Abeyance Motion at 2.

impermissible because it is a second request for reconsideration of the same issue.[44] The Staff argues that the embedded second request for reconsideration mirrors the first in its failure to seek leave to request reconsideration and should be denied on that procedural ground, just as the first reconsideration request was denied.[45] NC WARN counters that its motion was submitted in a timely manner because NC WARN wished to preserve its ability to argue that the Shearon Harris proceeding should be stayed if the Commission decides in TSEP's favor[46] — in other words, NC WARN appears to argue that the filing of the TSEP Petition (or perhaps the Commission's decision regarding that petition) is the initiating event for timeliness purposes.[47] Our rules do not provide for multiple requests for reconsideration of the same decision, and, even if they did, the arguments in the TSEP Petition — which NC WARN now adopts but could have made earlier — do not provide a compelling substantive basis for reconsidering CLI-08-15. Nor does TSEP's pleading reset the clock for purposes of calculating timeliness.[48] We deny the motion for reconsideration.

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[44] Progress Response to Abeyance Motion at 4. Progress also raises other procedural arguments, noting that NC WARN failed to request leave to file the motion, and that the motion is out of time because CLI-08-15 was issued on July 23, 2008. *Id*.

[45] Staff answer to Abeyance Motion at 2 (unnumbered), citing Order (Sept. 11, 2008) (unpublished) (ML082550620).

[46] NC WARN Reply Re Abeyance Motion at 2.

[47] We note that the Secretary of the Commission responded to the TSEP Petition in a December 30, 2008 letter. The Secretary informed TSEP that the applicant in that proceeding, Exelon Nuclear Texas Holdings, L.L.C., notified the Staff that it expects to designate an alternative reactor technology for the Victoria County project. As a result, the Staff suspended review of the application and no hearing notice has issued. *See* Letter from A.L. Bates, Acting Secretary of the Commission, to D. Curran and J. Blackburn (Dec. 30, 2008) (ML083650299).

[48] 10 C.F.R. § 2.323(e), governs motions for reconsideration and provides:

Continued . . .

2. Motion to Hold Proceeding in Abeyance

NC WARN asks that we hold this proceeding in abeyance "pending [the] completion by the NRC of a rulemaking on the standard design certification for the AP1000 design."[49] NC WARN argues "that the TSEP Petition shows that it is unlawful for the Commission to conduct [COL application] adjudications and design certification rulemakings simultaneously in any proceeding for the licensing of a new nuclear power plant."[50] We reject this argument. As we held in CLI-08-15, our rules permit the filing of combined license applications in advance of design certifications. The design certification rulemaking and individual COL adjudicatory proceedings may proceed simultaneously, and issues raised in an adjudicatory proceeding that are appropriately addressed in the generic design certification rulemaking are to be referred to the rulemaking for resolution.

NC WARN also argues that the completion date for the certification of the AP1000 is uncertain and that because of this, "the burden on NC WARN to achieve any semblance of participation in the [COL application] adjudication is nearing impossibility

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> Motions for reconsideration may not be filed except upon leave of the presiding officer or the Commission, upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid. A motion must be filed within ten (10) days of the action for which reconsideration is requested. The motion and any responses to the motion are limited to ten (10) pages.

We note that NC WARN has not asserted changed circumstances that could not previously have been brought to us, nor do we find any such circumstances. *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-7, 29 NRC 395, 398 n.8 (1989).

[49] NC WARN Abeyance Motion at 1.

[50] *Id*. at 2.

until and unless the Commission holds the adjudication in abeyance until the AP1000 design is completed."[51] We reject this argument as well. The burden of participating in a proceeding is not a harm that can form the basis for holding a proceeding in abeyance. "[I]t has long been a 'basic principle that a person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation.'"[52] These obligations include participation within the schedule established for the proceeding despite the burden on a participant's time and resources and despite uncertainties engendered by the potential for new information.[53]

Moreover, our remand to the Board for reassessment of the admissibility of NC WARN's Contention TC-1 may or may not result in a contested proceeding and the Board may or may not find elements of the contention, if admitted, appropriate for referral to the design certification amendment rulemaking. We deny the motion to hold the proceeding in abeyance.

IV. CONCLUSION

For the foregoing reasons, we *grant* the appeals and *remand* the proceeding to the Board for reassessment of the admissibility of Contention TC-1. We *deny* the motion to hold the proceeding in abeyance, and also *decline* to reconsider our ruling in CLI-08-15.

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[51] NC WARN Abeyance Motion at 2.

[52] *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 338-39 (1999), citing *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983).

[53] *Cf*. *Oconee*, CLI-99-11, 49 NRC at 338-39 (petitioners' request to "reschedule" a license renewal proceeding until after resolution of all Staff requests for additional information was denied).

IT IS SO ORDERED.

For the Commission

(NRC SEAL)

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 18th day of May, 2009